

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA

UNITED FOOD AND COMMERCIAL  
WORKERS UNION,  
Individually and On Behalf of All Others  
Similarly Situated,

Plaintiff,

-against-

CHESAPEAKE ENERGY CORPORATION,  
AUBREY K. MCCLENDON, MARCUS C.  
ROWLAND, MICHAEL A. JOHNSON,  
RICHARD K. DAVIDSON, FRANK A.  
KEATING, BREENE M. KERR, CHARLES T.  
MAXWELL, MERRILL A. MILLER, JR.,  
DONALD L. NICKLES, FREDERICK B.  
WHITTEMORE, UBS INVESTMENT BANK,  
ABN AMRO, BANC OF AMERICA  
SECURITIES LLC and WELLS FARGO  
SECURITIES,

Defendants.

**Civil Action No. 5:09-CV-1114**

**CLASS ACTION**

**CHESAPEAKE ENERGY AND  
INDIVIDUAL DEFENDANTS'  
REPLY IN SUPPORT OF MOTION  
TO STRIKE AMENDED  
COMPLAINT**

Plaintiff's Opposition to Defendants' Motion to Strike ("Opposition" or "Opp.") concedes that the text of Section 11 limits the purported class to only those shareholders who can actually trace their shares to the Registration Statement. Opp. at 1. As set forth in the Motion to Strike, however (at 3-4), in cases such as this involving secondary offerings, tracing is impossible for investors who purchased after the Offering. Accordingly, plaintiff's proposed class definition should be limited to only those who purchased in the Offering, and the Court should strike the more expansive allegations of Complaint paragraphs 1 and 68. Compl. ¶¶ 1, 68 (attempting to expand class allegations to include those who purchased "pursuant to" or "pursuant and/or traceable to" the Registration Statement).

Plaintiff argues that it is possible for certain open market purchasers to trace their shares back to the Offering. Opp. at 3. Plaintiff is wrong. Unlike open-market purchases following an initial public offering, there is no means for anyone who purchases after a secondary offering to trace their purchase to the registration statement.

A fundamental component of modern investing is that shares are held in "street name," meaning individual shares exist anonymously. In this system, shares in the open market are "wholly fungible" with any share from the same company regardless of which offering it originated from. *See In re Fleetboston Financial Corp. Sec. Litig.*, 253 F.R.D. 315, 345 (D.N.J. 2008). Accordingly, shares issued in secondary offerings are "unable to satisfy the tracing requirement of Section 77k..." *Id.*

Here, the Offering at issue consisted of 25,000,000 shares, while more than 584,000,000 shares of Chesapeake common stock already existed in the market at the time. The idea that shares held in street name and traded in the open market could be traced back to the Offering is pure fiction. Allowing the Complaint to suggest otherwise risks improperly including some portion of the other 584 million additional shareholders in the class.

Accordingly, the Court should strike the allegations contained in Complaint paragraphs 1 and 68, and limit the alleged class to only those included in the Class definition set forth in paragraph 51: “persons who purchased Chesapeake common stock in the Offering.”

Date: March 15, 2010

ROBERT P. VARIAN  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 15, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed March 15, 2010 at San Francisco, California.

/s/ M. Todd Scott

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